

(1960) 11 OHC CK 0021
In the Orissa High Court
Case No : M.A. No. 167 of 1957

The State of Orissa

APPELLANT

Vs

Bandmali Babu

RESPONDENT

Date of Decision : 21-11-1960

Acts Referred:

Defence of India Act, 1971 — Section 19(1)
Land Acquisition Act, 1894 — Section 23, 23(1), 34
Land Acquisition Rules — Rule 23

Citation : (1961) 27 CLT 164

Hon'ble Judges : Narasimham, C.J; R.K. Das, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; G.K. Misra and B. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a appeal by the State of Orissa against a portion of the award of the Arbitrator, Hirakud Land Organization, fixing the compensation payable to the Respondent Bandmali Babu in respect of (i) 9.23 acres of Bhogra lands and (ii) some mohul and mango trees that were acquired by the State in connection with the Hirakud Dam Project. The relevant facts have been fully set out in the main judgment of this Court in M.A. No. 165 of 1957.

2. So far as Bhogra lands are concerned the learned Arbitrator estimated the compensation in accordance with the market value and refused to give weight to the first proviso to clause (e) of Sub-section (1) of Section 7 of Orissa Act XVIII of 1948, on the ground that the said proviso was ultra vires as held by a Division Bench of this Court in State of Orissa Vs. Bharat Chandra Nayak, . The learned Advocate-General contended that the aforesaid Division Bench decision required reconsideration in view of the amendment made to the Constitution by the Constitution (Fourth Amendment) Act 1955. This question was fully discussed by another Division Bench of this Court in State of Orissa v. Satyabadi ILR 1960 Cutt

48 in which the above contention of the Advocate-General was rejected and it was held that the first proviso to clause (e) of Sub-section (1) of Section 7 of the Act was in any case invalid and not saved by the Fourth Amendment to the Constitution, and that the Division Bench decision of this Court in *State of Orissa Vs. Bharat Chandra Nayak*, still continues to be good law. Hence I see absolutely no reason to interfere with the award of the Arbitrator as regards the compensation payable for the Bhogra lands.

3. His Lordship discusses the evidence regarding compensation payable for trees.

4. I may now deal with an important question raised by the learned Advocate General as regards award of interest. The Arbitrator directed that interest at 6 percent per annum should be paid from the date of taking over possession till the date of actual payment after deducting the interim payment, if any. The learned Advocate-General contended that the Respondent was not entitled to any interest prior to the date of commencement of the litigation before the Arbitrator. He relied on the well known decision of the Privy Council in *B.N. Rly Co. v. Ruttamji Ramji* AIR 1938 P.C. 67 to the effect that interest prior to the commencement of litigation is not a matter of discretion with the Court, but depends upon the substantive law on the subject. According to the learned Advocate General there was no law, nor was there any agreement between the parties for payment of interest from the date of taking over possession.

5. This necessitates a careful examination of the provisions of Section 7 of the Orissa Act XVIII of 1948, with a view to find out whether the deprived owner was entitled to interest from the date on which possession was taken over from him. The Act is entirely silent on this question. Sub-section (1) of Section 7 merely says that the deprived owner is entitled to compensation. The expression "compensation" has been construed by the Supreme Court in *The State of West Bengal Vs. Bela Banerjee and Others*, as "the just equivalent of what the owner has been deprived of". It is true that Clause (e) of Sub-section (1) of Section 7 says that in making the award the Arbitrator shall have due regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act, but as pointed out by the Privy Council in *Ryots of Garbandho v. Zamindar of Parlakemedi* AIR 1964 P.C. 164-(180) the words "have regard to" should be construed to mean that the provision in question should be taken into consideration, but it is not necessary that the Arbitrator should keep rigidly within the limits laid down in Sub-section (1) of Section 23 of the Land Acquisition Act. His main duty is to find out the compensation payable, that is the "just equivalent of what the owner has been deprived of" and for that purpose he must give weight to the principles of that sub-section. But that does not mean that he should not, in appropriate cases, take other factors into consideration. The owner is deprived of the annual income from the land from the date on which he is dispossessed under the provisions of Orissa Act, XVIII of 1948. The reference to the Arbitrator may take several years for disposal and if he is merely given the market value of the lands by way of compensation there is practically

no compensation for his being deprived of the income from the lands during that long period. It is true that with a view to avoid this hardship, express provision was made in the Land Acquisition Act, in Section 34, for payment of interest to a person whose lands were acquired from the date of dispossession. But the Advocate General contended that Section 34 of the Land Acquisition Act was not expressly mentioned in Clause (e) of Sub-section (1) of Section 7 of the Orissa Act and hence the Arbitrator was not entitled to apply the principles of that section and award interest from the date of dispossession. He further contended that the express reference to Sub-section (1) of Section 23 of the Land Acquisition Act must necessarily lead to the inference that all other sections of the Land Acquisition Act either as regards payment of interest or as regards payment of compensation, by necessary implication, cannot apply to the proceedings before the Arbitrator. This is based on the well known maxim: "Expressio unius est Exclusio Alterius". There would have been some justification for this contention of the Advocate General if, in the Orissa Act, it had been expressly stated that the Arbitrator shall, in making the award, strictly follow the principles laid down in Sub-section (1) of Section 23 of the Land Acquisition Act. But as already pointed out, the relevant expression used in Clause (e) of Sub-section (1) of Section 7 is "shall have due regard to" which is somewhat elastic and leaves some discretion with the Arbitrator, the only limitation being that what he awards must be "compensation" as legally interpreted in *Bela Banerji* case. Hence the other provisions of the Land Acquisition Act which, in essence, deal with the principles for ascertaining the compensation payable to a deprived owner may also be taken into consideration by the Arbitrator.

6. This view is fully supported by a Division Bench decision of the Calcutta High Court reported in *The Province of Bengal Vs. Pawn Kissen Law and Co.*, in which an earlier Madras decision reported in *Associated Mills v. Provincial Government of Madras* AIR 1948 Mad. 257 was dissented from. The Calcutta decision dealt with Section 19(1)(a) of the Defence of India Act which was quite similar to Section 7 of the Orissa Act and the principles laid down by their Lordships of that High Court would apply with equal force here. In that case the Privy Council decision in AIR 1938 67 (Privy Council) was distinguished on the ground that: that was a case of damages for breach of contract whereas interest from the date of dispossession is awarded by way of compensation for the loss of income from the property acquired. The earlier Madras view in *Associated Mills v. Provincial Government of Madras* AIR 1948 Mad. 257 was also distinguished in a later decision reported in *District Collector of Krishna Vs. Pulavarthi Viswanadam and Others*, where the Calcutta view was adopted. The Advocate General submitted that we should prefer the Madras view in *Associated Mills v. Provincial Government of Madras* AIR 1948 Mad. 257 on this question. But the reasons given by the learned Judges of the Calcutta High Court are very convincing and we see no reason to prefer the earlier Madras decision which was also not accepted in the later Madras decision in *District Collector of Krishna Vs. Pulavarthi Viswanadam and Others*, no subsequent decision of any High Court

expressing dissent from the Calcutta view has been cited before us. I would accordingly hold following the Calcutta view-that the Arbitrator was entitled to award interest to the deprived owner from the date of his dispossession, till the date on which final payment was made.

7. Just before the delivery of judgment in this case Mr. G.K. Misra invited our attention to Notification No. 15680-L. A-39.57 Misc-R dated the 18th September 1957 published by the Revenue Department, Government of Orissa, by which a new Rule, viz. Rule 23, was inserted in the Rules framed under the Act authorising the competent authority at the time of payment of compensation to the dispossessed owner to pay interest also at 6 percent per annum on the amount of compensation for the entire period between the date of taking possession of the land and the date notified for making the payment. This amendment to the Rules was made after the decision of the Arbitrator was given on 31st May 1957 and it was not given retrospective effect. Nevertheless this amendment to the Rules may be taken as an indication of the acceptance of the principle that the interest payable in such cases is by way of compensation s discussed in the preceding paragraphs.

8. The appeal is therefore dismissed with costs.

R.K. Das, J.

9. I agree.